

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ALAN E BERGMAN**  
Claimant

**APPEAL NO. 10A-UI-01239-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARNER-BOCKEN CO**  
Employer

**OC: 04/27/08**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Alan Bergman filed an appeal from a representative's decision dated January 12, 2010, reference 02, which denied benefits based on his separation from Farner-Bocken Company. After due notice was issued, a hearing was held by telephone on March 10, 2010. Mr. Bergman participated personally. The employer participated by Amy Ross, Human Resources Manager; Dave Holdsworth, Transportation Manager; and Kevin Smejkal, Crossdock Supervisor. Exhibits One, Two, and Three were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Bergman was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bergman was employed by Farner-Bocken Company from September 17, 2008 until December 16, 2009 as a full-time route delivery driver. He was discharged from the employment.

Mr. Bergman received a written warning on March 18, 2009 because he falsified his starting times. He indicated he started work at 4:00 a.m. on March 12 but was actually sleeping in his vehicle from 4:00 until 5:30 a.m. On March 13, he indicated a 5:00 a.m. start time but did not actually start until 5:30 a.m. He received an additional warning on March 18 advising that he was not to sleep in the vehicle while riding with other drivers. He was told he was expected to assist the driver at all stops. Mr. Bergman was suspended from work for three days on April 20 because he had been sleeping on the job on April 10 and April 16.

The decision to discharge Mr. Bergman was based on complaints that he was not assisting the coworkers he rode with. The employer spoke with two customers for input. One indicated that Mr. Bergman stood outside the truck and smoked while the driver sorted orders in the truck. The customer indicated that she left for a period of approximately 20 minutes and that Mr. Bergman was still outside smoking when she returned. The customer also indicated that a

stack of empty totes had not been moved during her absence. A second customer indicated that Mr. Bergman stood by the door and drank coffee while the driver worked. This customer indicted that he wheeled in three carts while the remainder of the work was done by the driver.

The employer spoke with the driver Mr. Bergman rode with on December 11 and 12. The driver recited numerous instances of Mr. Bergman failing to provide assistance or refusing to perform certain aspects of his job. It was reported that he was also still sleeping in the truck while on duty. He also failed to remain at the shop at the end of the day to complete paperwork and sort the totes. As a result of his continual failures, Mr. Bergman was discharged on December 16, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, it is concluded that the employer has satisfied its burden of proof. Mr. Bergman was aware that the employer did not want him sleeping on the job. It is true that he was sleeping while the truck was traveling. However, the employer expected he would use that drive-time to learn about the route.

Mr. Bergman was also aware that he was expected to work with the driver. Rather than assisting the driver, he would drink coffee while standing around watching the driver work. This information came from the driver as well as from customers who were in a position to observe the two as they worked. Mr. Bergman also failed to remain to assist with the paperwork necessary for the job or to sort and count the totes at the end of the day. His actions created more work for the driver than would have been required if he had been devoting his full efforts to his job. Mr. Bergman was, in essence, loafing on the job. He knew his continued employment was in jeopardy because of his prior warnings.

After considering all of the evidence, the administrative law judge concludes that substantial misconduct has been established by the evidence. Accordingly, benefits are denied.

**DECISION:**

The representative's decision dated January 12, 2010, reference 02, is hereby affirmed. Mr. Bergman was discharged by Farner-Bocken Company for misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs